

110TH CONGRESS  
2D SESSION

# S. 2860

To diminish predatory lending by enhancing appraisal quality and standards, to improve appraisal oversight, to ensure mortgage appraiser independence, to provide for enhanced remedies and enforcement, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 15, 2008

Mr. CASEY (for himself and Mr. MARTINEZ) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

To diminish predatory lending by enhancing appraisal quality and standards, to improve appraisal oversight, to ensure mortgage appraiser independence, to provide for enhanced remedies and enforcement, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Fair Value and Inde-  
5       pendent Appraisal Act”.

1 **SEC. 2. PROPERTY APPRAISAL REQUIREMENTS.**

2 (a) IN GENERAL.—Section 129 of the Truth in Lend-  
 3 ing Act (15 U.S.C. 1639) is amended by adding at the  
 4 end the following new subsection:

5 “(m) PROPERTY APPRAISAL REQUIREMENTS.—

6 “(1) IN GENERAL.—A creditor may not extend  
 7 credit in the form of a mortgage referred to in sec-  
 8 tion 103(aa) to any consumer, without first obtain-  
 9 ing a written appraisal of the property to be mort-  
 10 gaged, prepared in accordance with the requirements  
 11 of this subsection.

12 “(2) APPRAISAL REQUIREMENTS.—

13 “(A) PHYSICAL PROPERTY VISIT.—An ap-  
 14 praisal of property to be secured by a mortgage  
 15 referred to in section 103(aa) does not meet the  
 16 requirements of this subsection unless it is per-  
 17 formed by a qualified appraiser who conducts a  
 18 physical property visit of the interior of the  
 19 mortgaged property.

20 “(B) SECOND APPRAISAL UNDER CERTAIN  
 21 CIRCUMSTANCES.—

22 “(i) IN GENERAL.—If the purpose of  
 23 a mortgage referred to in section 103(aa)  
 24 is to finance the purchase or acquisition of  
 25 the mortgaged property from a person  
 26 within 180 days of the date of purchase or

1 acquisition of such property by that person  
 2 at a price that was lower than the current  
 3 sale price of the property, the creditor  
 4 shall obtain a second appraisal from a dif-  
 5 ferent qualified appraiser. The second ap-  
 6 praisal shall include an analysis of the dif-  
 7 ference in sale prices, changes in market  
 8 conditions, and any improvements made to  
 9 the property between the date of the pre-  
 10 vious sale and the current sale.

11 “(ii) NO COST TO CONSUMER.—The  
 12 cost of any second appraisal required  
 13 under clause (i) may not be charged to the  
 14 consumer.

15 “(C) QUALIFIED APPRAISER DEFINED.—  
 16 For purposes of this subsection, the term  
 17 ‘qualified appraiser’ means a person who—

18 “(i) is certified or licensed by the  
 19 State in which the property to be ap-  
 20 praised is located; and

21 “(ii) performs each appraisal in con-  
 22 formity with the Uniform Standards of  
 23 Professional Appraisal Practice and title  
 24 XI of the Financial Institutions Reform,  
 25 Recovery, and Enforcement Act of 1989,

1                   and the regulations prescribed under such  
2                   title, as in effect on the date of the ap-  
3                   praisal.

4                   “(3) FREE COPY OF APPRAISAL.—A creditor  
5                   shall provide 1 copy of each appraisal conducted in  
6                   accordance with this subsection in connection with a  
7                   mortgage referred to in section 103(aa) to the con-  
8                   sumer without charge, at least 3 days prior to the  
9                   transaction closing date.

10                  “(4) CONSUMER NOTIFICATION.—At the time  
11                  of the initial mortgage application, the consumer  
12                  shall be provided with a statement by the creditor  
13                  that any appraisal prepared for the mortgage is for  
14                  the sole use of the creditor, and that the consumer  
15                  may choose to have a separate appraisal conducted  
16                  at their own expense.

17                  “(5) VIOLATIONS.—In addition to any other li-  
18                  ability to any person under this title, a creditor  
19                  found to have willfully failed to obtain an appraisal  
20                  as required in this subsection shall be liable to the  
21                  consumer for the sum of \$2,000.”.

22                  (b) EQUAL CREDIT OPPORTUNITY ACT AMEND-  
23                  MENT.—Section 701(e) of the Equal Credit Opportunity  
24                  Act (15 U.S.C. 1691(e)) is amended to read as follows:

25                  “(e) COPIES FURNISHED TO APPLICANTS.—

1           “(1) IN GENERAL.—Each creditor shall furnish  
 2           to an applicant, a copy of all appraisal reports and  
 3           valuations developed in connection with the appli-  
 4           cant’s application for a loan that is or would have  
 5           been secured by a lien on residential real property.

6           “(2) PROCEDURES.—Appraisal reports shall be  
 7           furnished under this subsection upon written request  
 8           by the applicant, made within a reasonable period of  
 9           time of the application and before closing.

10          “(3) REIMBURSEMENT.—The creditor may re-  
 11          quire the applicant to pay a reasonable fee for the  
 12          provision of copies of appraisal reports under this  
 13          subsection.

14          “(4) NOTIFICATION TO CONSUMERS.—The  
 15          creditor shall notify (pursuant to regulations pre-  
 16          scribed by the Board) an applicant in writing of the  
 17          right to receive a copy of each appraisal report,  
 18          under this subsection.”.

19          (c) UNFAIR AND DECEPTIVE ACTS AND PRACTICES  
 20          RELATING TO CERTAIN CONSUMER CREDIT TRANS-  
 21          ACTIONS.—Chapter 2 of the Truth in Lending Act (15  
 22          U.S.C. 1631 et seq.) is amended by inserting after section  
 23          129 the following new section:

1 **“SEC. 129A. UNFAIR AND DECEPTIVE ACTS AND PRACTICES**  
2 **RELATING TO CERTAIN CONSUMER CREDIT**  
3 **TRANSACTIONS.**

4 “(a) IN GENERAL.—It shall be unlawful, in providing  
5 any mortgage lending services for a consumer credit trans-  
6 action secured by the principal dwelling of the consumer  
7 or any mortgage brokerage services for such a transaction,  
8 to engage in any unfair or deceptive act or practice.

9 “(b) APPRAISAL INDEPENDENCE.—For purposes of  
10 subsection (a), unfair and deceptive acts or practices shall  
11 include—

12 “(1) any appraisal of a property offered as se-  
13 curity for repayment of the consumer credit trans-  
14 action that is conducted in connection with such  
15 transaction, in which a person with an interest in  
16 the underlying transaction coerces, bribes, extorts,  
17 colludes, or otherwise improperly influences a person  
18 conducting or involved in an appraisal, or attempts  
19 to coerce, bribe, extort, collude, or otherwise improv-  
20 erly influence such a person, for the purpose of caus-  
21 ing the appraised value assigned under the appraisal  
22 to the property to be based on any factor other than  
23 the independent judgment of the appraiser;

24 “(2) mischaracterizing or suborning any  
25 mischaracterization of, the appraised value of the  
26 property securing the extension of credit;

1           “(3) seeking to influence an appraiser or other-  
2           wise to encourage a targeted value in order to facili-  
3           tate the making or pricing of the transaction; and

4           “(4) failing to timely compensate an appraiser  
5           for a completed appraisal, regardless of whether the  
6           transaction closes.

7           “(c) EXCEPTIONS.—The requirements of subsection  
8           (b) may not be construed as prohibiting a mortgage lend-  
9           er, mortgage broker, mortgage banker, real estate broker,  
10          or any other person with an interest in a real estate trans-  
11          action from asking an appraiser to correct errors in the  
12          appraisal report.

13          “(d) RULEMAKING PROCEEDINGS.—The Board and  
14          the Federal Trade Commission—

15                 “(1) shall jointly prescribe regulations defining  
16                 with specificity acts or practices which are unfair or  
17                 deceptive in the provision of mortgage lending serv-  
18                 ices for a consumer credit transaction secured by the  
19                 principal dwelling of the consumer or mortgage bro-  
20                 kerage services for such a transaction, within the  
21                 meaning of subsections (a), (b), and (c); and

22                 “(2) may jointly issue interpretive guidelines  
23                 and general statements of policy with respect to un-  
24                 fair or deceptive acts or practices in the provision of  
25                 mortgage lending services for a consumer credit

1 transaction secured by the principal dwelling of the  
 2 consumer and mortgage brokerage services for such  
 3 a transaction, within the meaning of subsections (a),  
 4 (b), and (c).

5 “(e) DEFINITIONS.—For purposes of this section—

6 “(1) the terms ‘mortgage brokerage services’  
 7 and ‘mortgage lending services’, have the meanings  
 8 given such terms in section 13(f) of the Real Estate  
 9 Settlement Procedures Act of 1974 (12 U.S.C.  
 10 2611(f)); and

11 “(2) the term ‘improperly influence’ means any  
 12 attempt to manipulate, through coercion, extortion,  
 13 collusion, intimidation, non-payment for services ren-  
 14 dered, direct or indirect compensation, or bribery,  
 15 the development, reporting, result, or review of a  
 16 property appraisal.

17 “(f) PENALTIES.—

18 “(1) FIRST VIOLATION.—In addition to the en-  
 19 forcement provisions referred to in section 130, each  
 20 person who violates this section shall forfeit and pay  
 21 a civil penalty of not more than \$10,000 for each  
 22 day during which any such violation continues.

23 “(2) SUBSEQUENT VIOLATIONS.—In the case of  
 24 any person on whom a civil penalty has been im-  
 25 posed under paragraph (1), paragraph (1) shall be



1 applied by substituting ‘\$20,000’ for ‘\$10,000’ with  
 2 respect to all subsequent violations.

3 “(3) ASSESSMENT.—The agency referred to in  
 4 subsection (a) or (c) of section 108 with respect to  
 5 any person described in paragraph (1) shall assess  
 6 any penalty under this subsection to which such per-  
 7 son is subject.”.

8 (d) CLERICAL AMENDMENT.—The table of sections  
 9 for chapter 2 of the Truth in Lending Act is amended  
 10 by inserting after the item relating to section 129 the fol-  
 11 lowing new item:

“Sec. 129A. Unfair and deceptive practices and acts relating to certain con-  
 sumer credit transactions.”.

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